IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

Crl.L.P..No. 247 of 2007()

CC.670/2002 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER/COMPLAINANT

M/S SHREYAS TEXTILES, SARI DEALERS
37/364-B, BROADWAY, LINK ROAD, COCHIN-31
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
MR.SIVADAS

BY ADV. SRI.C.HARIKUMAR
SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS: ACCUSED AND STATE

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1. MR. IBRAHIMKUTTY,
AMABALAMVILAYIL HOUSE,
KERALAPURAM, KOLLAM.

2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1-BY ADV. SRI.GEO PAUL
SRI.SANU MATHEW
SRI.M.B.SANDEEP
SMT.RAZEEMA P.T.
R2-BY P.P.SRI.K.C. SANTHOSH KUMAR

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.247 OF 2007

Dated this the 1st day of June, 2007.

O R D E R

This is an application for special leave to appeal to be filed against the judgment in C.C.No.670/2002 on the file of the Chief Judicial Magistrate Court, Ernakulam. The appellant is a firm represented by its power of attorney holder - PW1, before the court below. As per the complaint filed for and on behalf of the appellant firm, it was alleged that the 1st respondent herein had purchased textile goods for an amount of Rs.4,11,119.31 and in discharge of the said amount, he had issued Ext.P1 cheque numbered as 202343 dated 5.2.2002. When the cheque was presented for encashment, the same was dishonoured on the ground of account stands closed. On getting intimation of such dishonour, a lawyer notice was issued to the 1st respondent for and on behalf of the appellant/complainant. The 1st respondent had received the same on 28.2.2002. But, in spite of the receipt of such notice he had not paid the amount, the complaint has been filed before the court. Though the complaint was originally filed alleging that the 1st respondent had committed an offence under

Section 420 of the I.P.C, subsequently the same was amended to the effect that the 1st respondent had committed an offence under Section 138 of the N.I.Act, 1881.

2. To prove the case against the 1st respondent, one Sivadas was examined as PW1 and Exts.P1 to P6 were also produced. On closing the evidence on behalf of the appellant/complainant, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations in the complaint, the 1st respondent had stated that there was no transaction between the appellant and himself which led to the issuance of Ext.P1 cheque. The 1st respondent though not produced any evidence either documentary or oral, PW1 was cross examined to the effect that the case set up by the 1st respondent as true. After the trial, the trial court acquitted the 1st respondent on two grounds. Firstly, the case of PW1 was that he was the power of attorney holder of the appellant firm but, he had not produced any document to sow that he is authorised to file the complaint for ad on behalf of the appellant firm. Secondly, the trial court found that the appellant/complaint failed to prove that the 1st respondent had issued Ext.P1 cheque in discharge of any legally

enforcible debt. Against the judgment of the trial court, the special leave to appeal has been filed.

3. This Court heard the learned counsel appearing for the petitioner in detail and perused the records made available. . It is the specific case set up by the complainant through the evidence adduced by PW1 that the 1st respondent had purchased textile goods for an amount of Rs.4,11,119.31 and for the payment of the price of that textile materials, he had issued Ext.P1. The trial court had categorically found that even though PW1 was examined as the power of attorney holder of the firm, there was no document to produce or attempted to produce before the court to show that he is authorised by the Board of Directors or the Managing Director of the appellant firm to represent before the court. The trial court, however, found that the complaint itself was filed for and on behalf of the appellant firm but, the evidence adduced by PW1 would not show that there was any transaction between the appellant and the 1st respondent as alleged in the complaint.

In the above circumstances, this Court is of the view that the two grounds upon which the acquittal of the 1st respondent was

ordered are on evidence. Hence, the judgment of the trial court requires no interference by this Court. Accordingly,the special leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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